IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 675 of 1986
Date of decision: 12.2.2007.

Lachhman ...Petitioner

Versus

The Joint Director, Panchayats, Punjab and others
...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. Vikas Bahl, Advocate,
for the petitioner.

Mr. N.S. Rapri, Advocate, for the
respondent.

K.S.GAREWAL, J.

Lachhman has filed this petition under Articles 226/227 of the Constitution of India to challenge the proceedings against him instituted by the Gram Panchayat of his village under Section 7 of the Punjab Village Common Lands (Regulation) Act 1961 (hereinafter referred to as **the Act**) for his ejectment from about 10K-13M land.

The Gram Panchayat had sought ejectment on the ground that it was the owner of the property and Lachhman was in its unauthorized possession. Lachhman appeared and pleaded that the Gram Panchayat was not the owner of the property and had never been in its possession. The

property was an evacuee property vested with the Custodian and he was in possession since Rabi 1976. He had been paying the rent to Tehsildar (Sales), he had constructed a pucca kotha, a hut and a tubewell etc. on the land. Gram Panchayat examined witnesses and produced documentary evidence in form of jamabandies for the years 1975-76 and 1977-78, khasra girdawari etc.. On the other hand, the petitioner produced witnesses as well as placed on record the jamabandies for the year 1960-61, 1977-78 and certain khasra girdawaries. He also placed on record receipt of Rs. 31.34 showing payment of rent of the evacuee land measuring 4K-17M.

The Collector came to the conclusion that Lachhman had succeeded in proving that the property was the evacuee property and had never vested in the Gram Panchayat. Entry in favour of the Gram Panchayat was made on the basis of some general instructions and shall not take this land out of the evacuee pool. The application was dismissed on May 19, 1980.

In the appeal filed by the Panchayat, the Commissioner came to the conclusion that the Custodian had no connection with the property as it was the ownership of the Gram Panchayat and there was no force in the plea that the Panchayat had never managed the land or had never given the land in auction. The name of Lachhman appeared for the first time in the year 1977-78. He was in possession of the land before 1976. The Commissioner found the Panchayat to be the ownership and Lachhman to be in its unauthorized possession. Accordingly, the appeal was accepted and the order of the Collector was set aside on January 10, 1986.

The sole question to be considered is whether the land in question is covered under the definition of shamlat deh or not ?

According to the learned counsel for the petitioner, shamlat land is defined under Section 2 (g) (3) of the Act. Therefore, relevant considerations are the land described in the revenue record as shamlat--used for the benefit of the village community or for other common purposes. Land used or reserved for the benefit of village community including streets, lanes, play-grounds etc. are also shamlat. In the present case, it was for the respondent-panchayat to establish that the land was shamlat under any of the classification mentioned under section 2 (g) (3) or (4) of the Act.

Reference was also made to 1992 (2) Revenue law Reporter, 197 (DB) entitled Om Parkash Versus The Assistant Collector Ist Grade, Narnaul and 1979 PLJ 318 entitled Amar Singh etc. Versus Gram Panchayat Mundhal Khurd.

On the other hand, counsel for the respondents has relied upon Gram Panchayat of Village Jamalpur v. Malwinder Singh and others AIR 1985 Supreme Court 1394 in order to argue that the Gram Panchayat was the owner of land and it was wrong to say that the property was the evacuee property vested in the Custodian under the Evacuee Property Act, 1950. In the above cited case it was held that even those lands which were shamlat and certain Muslims had share in the shamlat, would also vest in the panchayat. The Punjab Village Common Lands (Regulation) Act 1961 would prevail over the administration of Evacuee Property Act, 1950.

If the revenue record is examined in the present case it would become clear that the Gram Panchayat has been recorded as the owner, Lachmman is in occupation with effect from 1976 Rabi-**gair marusi tehat araazi matruka**. This entry would not take the land out of the holding of the Gram Panchayat and vest it in the Custodian. The law as interpreted by

the Supreme Court in Gram Panchayat of Village Jamalpur's case (supra) would apply. The judgments cited by the petitioner have no application in the present case.

There is no merit in the present petition. Dismissed.

February , 2007 **(K.S.GAREWAL)**
prem **JUDGE**

Pronounced on 12.2.2007.